

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

STATE OF TEXAS et al.,

Plaintiffs,

V.

U.S. ENVIRONMENTAL  
PROTECTION AGENCY, et al.,

Defendants,

BAYOU CITY WATERKEEPER,

**Intervenor-Defendant.**

Civil Action No. 3:23-cv-17

**INTERVENOR-DEFENDANT’S MOTION FOR LEAVE AND FOR EXTENSION OF  
TIME TO FILE COMBINED OPPOSITION TO PLAINTIFFS’ REQUEST FOR  
PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 6(b)(1)(A) and Southern District of Texas Local Rule 7.2, Intervenor-Defendant Bayou City Waterkeeper (the “Waterkeeper”) requests leave to file a Combined Opposition to the Plaintiffs’ Motions for Preliminary Injunction not to exceed 42 pages and a four (4) day extension of time up through and including Saturday, March 4, 2023, to respond. State Plaintiffs, the State of Idaho Plaintiff, and Federal Defendants do not oppose this motion. The Waterkeeper, however, was unable to obtain the Association Plaintiffs’ position before filing this motion. Waterkeeper supports this motion as follows:

1. On February 7, 2023, Plaintiffs in Case No. 3:23-cv-17 the State of Texas and five of its agencies (“State Plaintiffs”) moved for a preliminary injunction to enjoin the

effectiveness, implementation and enforcement of the final rule titled Revised Definition of “Waters of the United States” (the “Rule”), promulgated by the U.S. Environmental Protection Agency (“EPA”) and the U.S. Army Corps of Engineers (“Corps”) (collectively “Federal Agencies”). DKT. 13.

2. Plaintiffs in Case No. 3:23-cv-20 the American Farm Bureau et al. (“Association Plaintiffs”) also requested on February 7, 2023, that this Court preliminarily enjoin the Rule nationwide while the merits of Plaintiffs’ challenge are resolved. DKT. 15.
3. On February 9, 2023, the Waterkeeper filed a Motion to Intervene into Case No. 3:23-cv-17 (DKT. 20) and Case No. 3:23-cv-20 (DKT. 16). As detailed in the Waterkeeper’s Certificate of Conference in both Motions to Intervene, the other parties did not oppose the Waterkeeper’s intervention so long as it agreed to the deadlines negotiated by the parties, including Federal Defendants’ proposal to file a combined response on March 2. The Waterkeeper expressly agreed to those terms and discussed the proposed briefing schedule during its conferral with the State Plaintiffs. Accordingly, the Waterkeeper did not request any alternate schedules from the parties already agreed-upon deadlines.
4. On February 10, 2023, Federal Defendants filed an Unopposed Omnibus Motion to Consolidate, File a Consolidated Response to Plaintiffs’ Motions for Preliminary Injunction, and Extend Response Brief Deadline (“Unopposed Omnibus Motion”). DKT. 23. That motion noted the Waterkeeper’s pending motion to intervene and set forth the agreed-upon schedule.

5. The Court granted the Federal Defendants' Unopposed Omnibus Motion approving consolidation of the two cases Civil Action No. 3:23-cv-17 and Civil Action No. 3:23-cv-20 on February 13, 2023. The Court's Order also granted a 2-day extension of time to respond to both of Plaintiffs' requests for preliminary injunctions and granted leave for the Federal Defendants to file a 40-page combined response to the same. DKT. 27.
6. This Court granted the Waterkeeper's Motion to Intervene on February 14, 2023. DKT. 30. The Court's Order granting Waterkeeper's intervention did not expressly set a briefing schedule for Waterkeeper, which had agreed to the proposed schedule outlined in the Federal Defendants' Unopposed Omnibus Motion.
7. On February 27, 2023, State Plaintiffs filed a First Amended Complaint and Petition for review joining the State of Idaho as a plaintiff. DKT. 32. On the same day, the State Plaintiffs and the State of Idaho Plaintiff also filed an Unopposed Motion to Supplement Preliminary Injunction Motion ("Unopposed Motion to Supplement"). DKT 34. The Unopposed Motion to Supplement also included three additional requests:
  - a. A two (2) day extension of time up through and including Saturday, March 4, 2023 to respond to the forthcoming motion to supplement and declarations from the State of Idaho;
  - b. Two (2) additional pages—not to exceed forty-two (42) pages total—to respond to the State Plaintiffs, the State of Idaho Plaintiff, and the Association Plaintiffs requests to preliminarily enjoin the Rule.

- c. The March 15<sup>th</sup> hearing and other agreed-on deadlines remain the same.
8. The Waterkeeper is now filing this request for an extension of time to keep briefing requirements consistent between the parties and maintain a uniform schedule. In the interest of judicial economy, Intervenor-Defendant Bayou City Waterkeeper respectfully requests leave to file a Combined Opposition to the Plaintiffs' Motions for Preliminary Injunction not to exceed 42 pages and a four (4) day extension of time up through and including Saturday, March 4, 2023 to respond.
9. The Waterkeeper's requested leave and extension are both necessary to maintain uniform responses, deadlines, and keep all hearing dates in-tact. Additionally, the Waterkeeper is only requesting to adopt the deadlines already agreed to by the State Plaintiffs, State of Idaho Plaintiff, Association Plaintiffs and the Federal Defendants.
10. Both the requested leave and extension are sought in the interest of justice, not for delay, and no party will be prejudiced if the leave and the extension are granted.

Dated: February 28, 2022.

Respectfully submitted,  
EARTHJUSTICE

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### **CERTIFICATE OF CONFERENCE**

Pursuant to Southern District of Texas Local Rule 7.1, counsel for Bayou City Waterkeeper conferred with counsel for State Plaintiffs, State of Idaho Plaintiff, and Federal Defendants via email regarding their position on this Intervenor-Defendant's Motion for Leave and for Extension of Time to File Combined Opposition to Plaintiffs' Request for Preliminary Injunction. At the time of this motion, counsel for State Plaintiffs and counsel for the State of Idaho responded via email that they did not oppose the relief requested herein. Similarly, counsel for the Federal Defendants also responded via email that they are not unopposed to the relief requested. Counsel for the Waterkeeper also called counsel for the Association Plaintiffs and emailed, but counsel for Association Plaintiffs have yet to respond.

### **CERTIFICATE OF SERVICE**

I certify that on February 28, 2023, a copy of this **INTERVENOR-DEFENDANT'S MOTION FOR LEAVE AND FOR EXTENSION OF TIME TO FILE COMBINED OPPOSITION TO PLAINTIFFS' REQUEST FOR PRELIMINARY INJUNCTION** was served on the counsel stated below through the CM/ECF E-File System and by e-mail.

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